A.F.R. (32)

HIGH COURT OF CHHATTISGARH AT BILASPUR
CRIMINAL APPEAL No. 1924/2000

Appellant: Poyame Bhadru, Son of Shri Borga, aged about 48 years by caste Madiya, R/o. Village Silak Jhodi P.S. Kodenar, Distt. Bastar

Versus

Respondent: State of M.P. (now Chhattisgarh), P.S. Kodenar, Distt. Bastar

&

CRIMINAL APPEAL No. 2270/2000

Appellant: Sodi Mahadeo, son of Bhima aged about 25 years, caste- Madiya, R/o. Village- Silak Jhodi, P.S. Kodenar, Distt. Bastar

Versus

Respondent: State of M.P. (now Chhattisgarh), through the P.S. Kodenar, Distt. Bastar.

CORAM: **DB: HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA & HON'BLE SHRI DHIRENDRA MISHRA, JJ.**

PRESENCE

Shri Hanuman Prasad Agrawal, Advocate for appellant Poyami Bhadru in Cr.A. No. 1924/2000.

Ku. Sharmila Singhai, Advocate for appellant Sodi Mahadeo in Cr.A. No. 2270/2000.

Shri U.N.S. Deo, Addl. Public Prosecutor, for the State.

JUDGMENT
(Dated : 3-11-2006)

The following judgment of the Court was delivered on Dias by Vijay Kumar Shrivastava, J.

Both the appeals arise out of common judgment of conviction and order of sentence dated 14-7-2000 passed by First Additional Sessions Judge, Bastar at Jagdalpur in S.T. No. 57/2000, therefore they are taken together for hearing and disposal.

First Additional Sessions Judge, Bastar at Jagdalpur holding appellant Poyami Bhadru guilty for committing murder of his son Poyami Somaru under Section 302 read with Section 109 of I.P.C. and holding appellant Sodi Mahadeo guilty for committing murder of Poyami Somaru under Section 302 of I.P.C., sentenced each of the appellants to undergo imprisonment for life and fine with default stipulation.

Facts unfolded during trial are that Poyami Bhadru and his son Poyami Somaru developed strained relations, therefore Poyami Bhadru entered into a contract with Sodi Mahadeo asking him to kill Poyami Somaru and in lieu thereof assured him to pay Rs. 4,000/- and two goats. In the intervening night of 11-9-1999 and 12-9-1999 when Poyami Somaru was alone in his house, appellant Sodi Mahadeo entered inside his house and inflicted injuries with an axe on his head and killed him. On the next day morning when Poyami Bhadru visited the house of Poyami Somaru, he saw his dead body, therefore, he gave information to Kotwar. Kotwar Suklu accompanied with other persons went to Poyami Somaru's residence where they saw his dead body having injuries on his head. A meeting was convened, in presence of appellant Poyami Bhadru, Sodi Mahadeo in that meeting confessed his guilt by stating that Poyami Bhadru promised him to pay Rs. 4000/- and two goats for vanishing Poyami Somaru., therefore he killed him.

Suklu after knowing the details went to Police Station Kodenar where he gave merg intimation and got recorded First Information report. Sub-Inspector Jerol Lakda recorded Merg intimation and First Information Report and proceeded to place of occurrence to conduct inquest. In presence of Panch witnesses, he prepared inquest report and forwarded the dead body of Poyami Somaru to Primary Health Centre, Bade Kilepal. Dr. Lakhan Jurri did autopsy. He found three injuries on his body. The injuries were ante mortem in nature and were caused by hard and sharp object and in his opinion, cause of death was head injury and coma and the death was homicidal in nature. He prepared autopsy report and forwarded it to Police Station. During investigation, statements of witnesses have been recorded. From the place of occurrence, plain earth and blood stained earth were collected and a

piece of wood said to be broken piece of handle of the axe found on the place of occurrence was also recovered. All these articles were seized, spot map was prepared and on the memorandum statement of appellant Sodi Mahadeo, an axe having broken handle was recovered and seized. His clothes were also collected. After post mortem examination, Investigating officer collected clothes of the deceased. Seized axe was sent to medical officer for examination and opinion. Medical Officer Dr. Lakhan Jurri opinioned that the injuries No. 1 and 2 found on the body of the deceased Poyami Somaru could have been caused by it. After completion of investigation, charge sheet was led in the Court of Judicial Magistrate First Class, Jagdalpur who committed the case to the Court of Session for trial.

Charge under Section 302 of I.P.C. was framed against Sodi Mahadeo and charge under Section 302 read with Section 109 of I.P.C. was framed against Poyami Bhadru. Charges were read over and explained to them who abjured their guilt and claimed to be innocent. They pleaded that they have been falsely implicated in the offence. Learned trial Court after appreciating evidence on record, recorded findings against both the appellants and accordingly convicted and sentenced both of them.

Nature of death of Poyami Somaru to be homicidal and injuries found on his body are not disputed by the appellants. Even other wise, from the statement of Dr. Lakhan Jurri (P.W. 6) and autopsy report Ex. P-6, it has been established that the injuries found on the body of the deceased Poyami Somaru were ante mortem in nature and the death was caused due to head injury and coma and his death was homicidal in nature. The deceased received following injuries:-

(i) Incised cum stabbed wound 2 ½" x 2 ½" x 1" vertically bone deep over left side of temporal reason of skull;

(ii) Incised cum stab wound 2 ½" x 2 ½" x 1" bone deep, horizontally over left side of nape of neck;

(iii) Incised wound 3 ½" x 1 ½" x 1" muscle deep, horizontally over left side of Neck.

Prosecution case travels on extrajudicial confession made by the appellants. Evidence of Suklu (P.W. 7) and Jayram (P.W. 8) on extrajudicial confession have been relied on by the trial Court. All other witnesses P.W. 1 Sodi Kamli, P.W. 2 Poyami Chappe, P.W. 3 Madvi Dulgo, P.W. 4 Poyami Sukadi and P.W. 5 Madda, were declared hostile by the prosecution and they did not support the prosecution story.

Jairam P.W. 8 in examination-in-chief stated that in meeting, appellant Sodi Mahadeo stated that Poyami Bhadru asked him to kill Poyami Somaru, therefore, by assaulting with an axe, he killed Poyami Somaru but in cross-examination, he has stated that when Panchayat was convened, police people were there and enquiry was made in presence of police people and Sodi Mahadeo made confession as a result of threatening and on being assaulted by the police. From his statement it is clear that the extra judicial confession made by appellant Sodi Mahadeo was the result of assault and threatening, therefore, on his evidence, it cannot be accepted that a free and voluntary extrajudicial confession has been made by appellant Sodi Mahadeo.

Another witness P.W. 7 Suklu in his statement deposed that Poyami Bhadru went to the house of Sodi Mahadeo and asked him to kill Poyami Somaru and assured him to pay in lieu thereof Rs. 4000/- and two goats. Poyami Bhadru came to his house and stated that he asked Sodi Mahadeo to kill Poyami Somaru and for killing Poyami Somaru, assured him to pay Rs. 4,000/- and to give two goats, therefore, Sodi Mahadeo has killed Poyami Somaru with an axe. He went and saw the dead body of Poyami Somaru who had injuries on his temporal region and back side of head. Panchayat was convened. Poyami Bhadru on enquiry stated that he promised to pay Rs. 4,000/- and two goats to Sodi Mahadeo for killing Poyami Somaru and, therefore, Sodi Mahadeo killed Poyami Somaru with an axe. Sodi Mahadeo in Panchayat stated that Bhadru asked him to kill Poyami Somaru and assured to pay Rs. 4000/- and two goats, therefore, on the promise and instigation of Poyami Bhadru, he killed Poyami Somaru with an axe.

Jairam (P.W. 8) did not dipose that appellant Poyami Bhadru made any extrajudicial confession whereas Suklu (P.W. 7) in his statement stated that Poyami Bhadru made extrajudicial confession. From the statement of Jairam (P.W. 8), it appears that police party was present when Panchayat was convened whereas from the statement of Suklu (P.W. 7), it appears that before lodging report and giving information to police, the Panchayat took place. Suklu (P.W. 7) in his cross-examination stated that when the incident took place, due to night, on the next day morning, they went to police station. It appears that according to his statement, he went to police station on 13-9-1999 whereas Merg intimation Ex. P-9 and F.I.R. Ex. P-8 have been recorded on 14-9-1999.

In the Merg intimation Ex. P-9 and F.I.R. Ex.P-8, Suklu did not say a single word that Poyami Bhadru also made any extrajudicial confession. In merg intimation Ex. P-9, Suklu gave information that Poyami Somaru has been killed inside his house with an axe by Sodi Mahadeo. In Ex. P-8 i.e. First Information Report, Suklu reported that Poyami Bhadru came and inform him that somebody has killed his son Somaru inside his house. He further reported that in Panchayat, Mahadeo confessed that he was given assurance of payment of Rs. 4,000/- and two goats by Poyami Bhadru for killing Somaru, therefore he has killed Somaru by axe. Suklu (P.W.7) in his evidence before the Court not only contradicted his earlier statement but also improved his statement on material particulars. Other witnesses Poyami Chappe (P.W. 2), Madvi Dulgo (P.W. 3) present in the Panchayat did not support the story that appellants made confession of guilt before Panchayat.

Taking into account the contradictory statement of P.W. 7 Suklu with P.W. 8 Jairam and other witnesses, contradiction with earlier statement on material particular, story developed by improvement made by him in Court statement, no implicit reliance can be placed on his evidence.

P.W. 7 Suklu in his statement has clearly stated that after Panchayat, they went to forest where they saw the axe and left it there, therefore, in the instant case, the version of prosecution that at the instance of appellant Sodi Mahadeo, the axe was recovered, loses its sanctity. The statement of

(37)

Suklu (P.W. 7) is not reliable, from evidence of Jairam (P.W. 8) free and voluntary extra judicial confession made by Sodi Mahadeo is doubtful and no other evidence has been produced by the prosecution to establish involvement of appellants in the crime, therefore, on statement of Suklu (P.W. 7) and Jairam (P.W. 8), no conviction can be recorded against the appellants.

In the result, we are of the considered opinion that the conviction recorded by the trial Court cannot be sustained. The prosecution failed to prove beyond doubt involvement of both the appellants in the crime i.e. murder of Poyami Somaru, therefore both the appeals are allowed. Conviction recorded by the trial Court and sentence imposed by him on both the appellants are set aside and it is directed that both the appellants be set at liberty forthwith if not required in any other matter.

Sd//-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge

pathak